

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUTINTA MICHELO, KATHERINE SEAMAN,)	
MARY RE SEAMAN, and SANDRA TABAR,)	
individually and on behalf of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	
)	
NATIONAL COLLEGIATE STUDENT LOAN)	No. 18-cv-1781
TRUST 2007-2; NATIONAL COLLEGIATE)	
STUDENT LOAN TRUST 2007-3;)	
TRANSWORLD SYSTEMS, INC., in its own right and)	
as successor to NCO FINANCIAL SYSTEMS, INC.;)	
EGS FINANCIAL CARE INC., formerly known as)	
NCO FINANCIAL SYSTEMS, INC.; and)	
FORSTER & GARBUS LLP,)	
)	
Defendants.)	
)	
CHRISTINA BIFULCO, FRANCIS BUTRY,)	
and CORI FRAUENHOFER, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	
)	
NATIONAL COLLEGIATE STUDENT LOAN)	No. 18-cv-7692
TRUST 2004-2; NATIONAL COLLEGIATE)	
STUDENT LOAN TRUST 2006-4;)	
TRANSWORLD SYSTEMS, INC., in its own right and)	
as successor to NCO FINANCIAL SYSTEMS, INC.;)	
EGS FINANCIAL CARE INC., formerly known as)	
NCO FINANCIAL SYSTEMS, INC.; and)	
FORSTER & GARBUS LLP,)	
)	
Defendants.)	
)	

FILED VIA ECF

**PLAINTIFFS' OPPOSITION TO THE MOTION TO STAY
THE ORDER FOR SANCTIONS AGAINST
THE TRANSWORLD DEFENDANTS FOR THEIR DISCOVERY VIOLATIONS
CONCERNING THE DEPOSITION OF
EMPLOYEE-WITNESS "AFFIANT X"**

Plaintiffs oppose TSI’s motion to stay the Court’s April 23, 2021 Order sanctioning it for unacceptable discovery conduct concerning the deposition of a key employee-witness (“Affiant X”) (Dkt. No. 270).¹ TSI wrongly assumes a stay should be imposed simply because it has filed objections to the April 23 Sanctions Order. TSI cites to no law supporting its motion because no court has ever granted the relief TSI seeks. TSI’s motion should be denied.

I. ARGUMENT

TSI’s two-page motion cites no authority in seeking stay, merely noting that TSI has filed objections to the Court’s Sanctions Order. (Mot. at 1–2). The filing of objections does not justify a stay, and courts which have sanctioned discovery violations like TSI’s refuse to stay imposition, as doing so “would send entirely the wrong message.” *Auscape Int’l v. Nat’l Geographic Soc’y*, No. 02 Civ. 6441, 2003 U.S. Dist. LEXIS 19659, at *2–3 (S.D.N.Y. Nov. 5, 2003) (Kaplan, J.) (denying motion to stay sanctions).

If stays of sanction orders were freely granted, judges’ authority to regulate discovery violations like TSI’s would be undermined, if not extinguished. *See id.; accord, e.g., Rahman v. Smith & Wollensky Rest. Grp.*, No. 06 Civ. 6198; 2009 U.S. Dist. LEXIS 62063 (S.D.N.Y. July 20, 2009) (Kaplan, J.) (finding no reason why sanctioned party “should not be called upon to pay the piper”).

Absent proof of extraordinary prejudice against the sanctioned party, no stay can be granted. TSI has identified no such prejudice, which is fatal to its motion. *E.g., LabMD, Inc. v.*

¹ “TSI” or “Transworld Defendants” as used herein collectively refers to Transworld Systems, Inc. (“Transworld”), in its own right and as successor to NCO Financial Systems, Inc. (“NCO”), and EGS Financial Care Inc. (“EGS”), formerly known as NCO. The Court’s April 23 Order (the “Sanctions Order”) appears at Dkt No. 280 in Case No. 18-cv-1781; and Dkt. No. 210 in Case No. 18-cv-7692. TSI’s stay motion (“Mot.”) is at Dkt No. 293 in Case No. 18-cv-1781; and Dkt. No. 223 in Case No. 18-cv-7692.

Tiversa Holding Corp., No. 15-cv-92, 2020 U.S. Dist. LEXIS 80089, at *7 (W.D. Pa. May 7, 2020) (rejecting stay of sanctions over sanctionee's claim of irreparable prejudice upon imposition); *Metal Jeans, Inc. v. Metal Sport, Inc.*, No. CV 15-08987, 2019 U.S. Dist. LEXIS 60668, at *4–6 (C.D. Cal. Jan. 15, 2019) (same); *Mick Haig Prods., E.K. v. Doe*, No. 10-CV-1900, 2012 U.S. Dist. LEXIS 12926, at *10–16 (N.D. Tex. Jan. 24, 2012).

II. CONCLUSION

For the reasons set forth above, this Court should refuse to stay its Sanctions Order against TSI.

Dated: New York, New York
May 17, 2021

Respectfully submitted,

FRANK LLP

By: /s/ Gregory A. Frank
Gregory A. Frank (GF0531)
Marvin L. Frank (MF1436)
Asher Hawkins (AH2333)
305 Broadway, Suite 700
New York, New York 10007
Tel: (212) 682-1853
Fax: (212) 682-1892
gfrank@frankllp.com
mfrank@frankllp.com
ahawkins@frankllp.com

Counsel for Plaintiffs and the Classes